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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/751,240

12/31/2003

Brian D. Zelickson

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EXAMINER

PHAM, HUONG Q

ART UNIT

PAPER NUMBER

3772

MAIL DATE

DELIVERY MODE

05/31/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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**Office Action Summary**

Application No.

10/751,240

Applicant(s)

ZELICKSON ET AL.

Examiner

Huong Q. Pham

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 March 2007.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/3/2006</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

As indicated in the previous Office Action, the foreign documents listed on form 1449 ( filed on 7/5/2005) have not been considered because the examiner does not have a copy of these documents.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 , 5-7, 9- 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Mabuchi ( 4,513,737).

As for claim 3, Mabuchi teaches every claimed feature of claim 3 including a handheld device comprising internal motion generating structure 20, 21, 17, 19, 3 for imparting desired motion to a distal treatment component 6 at a distal tip 4, 4A (figures 1, 10) thereof, and a distal tip surface 4, 4A ( figure 10) having a connection element 30, 32 ( figure 10) for connecting the treatment component 6 with the distal tip 4, 4A, and an actuatable motion generator 20 and control element; the treatment component 6 having a first portion designed for connection with a motion generating subsystem

3,19,17 of the internal motion generator 20 through the connection element, and a second portion 8,7 having a shaped configuration and a first and second surface, wherein the second portion is configured so that the first surface is capable of maintaining in contact with the skin if desired, and is capable of imparting desired motion to the skin for a desired predetermined length of time and in accordance with a selected program ( the program can be decided by the user) to facilitate rejuvenation of the skin.

As for claims 1- 2, Mabuchi teaches every claimed steps including the steps of : assessing the skin to be rejuvenated; and selecting a proper program ( can be decided by a user) for a chosen treatment paddle, which is one of a variety of treatment paddles ( figures 21A- 22C) or components selectively attachable to a handheld device; the handheld device having an internal motion mechanism 20, 3, 19, 17, 21 for imparting desired motion to the chosen treatment paddle for a predetermined length of time and in accordance with the selected program, and maintaining the treatment paddle in contact with the skin for a desired or predetermined length of time ( the length of time can be determined by a user), wherein the paddle is chosen so that it is capable of imparting mechanical motion to the skin to be rejuvenated so that a tissue generation cascade is initiated or facilitated at the dermis of the skin.

As for claims 5-7 and 9-11, note that the device of Mabuchi is capable of providing a mechanical motion, reciprocal motion , or a circular motion ( by a user, including when the motor is on or off).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mabuchi ( 4,513,737).

Note the desired or predetermined of time for using the device of Mabuchi can be decided by a user in order to achieve the desired beauty treatment effect. This involves only obvious experimentations , and is well within the realm of one ordinary skill in the art, and does not provide any unobvious result, and therefore is not patentable over prior art.

***Response to Arguments***

Applicant's arguments filed 3/13/2007 have been fully considered but they are not persuasive. Note the comments relative to the claims above.

Applicant argues that Mabuchi does not disclose maintaining a device in contact with the skin. The examiner does not agree. Note that the device of Mabuchi includes all structure recited by applicant in the claims, which is capable of or can be held by a user to maintain the treatment paddle in contact with the skin ( including using the device and the treatment paddle when the motor is turned off) for a predetermined length of time.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huong Q. Pham whose telephone number is (571) 272-4980. The examiner can normally be reached on 8:45 AM - 5:15 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on ( 571) 272 - 4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3772

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

May 24, 2007

  
PATRICIA BIANCO  
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5/28/07